**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOSE TRUJILLO, individually and on behalf of all others similarly situated,

Plaintiff,

v.

APPLE COMPUTER, INC., a California corporation and AT&T MOBILITY LLC, a Georgia corporation,

Defendants.

CASE NO.: 07-CV-04946

Judge Kennelly

PLAINTIFF'S RESPONSE TO DEFENDANT APPLE INC.'S RULE 56.1 STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Pursuant to Local Rule 56.1(a), Plaintiff, JOSE TRUJILLO. ("Trujillo") submits the following Response to Defendant Apple, Inc.'s Rule 56.1 Statement of Undisputed Material Facts in support of its Motion for Summary Judgment.

Parties, Jurisdiction, and Venue

1. Plaintiff Jose Trujillo ("Plaintiff") is an individual who resides in Melrose Park, Illinois. (Compl. ¶ 1.)

RESPONSE: Plaintiff admits the statements in Paragraph No. 1.

2. Defendant Apple Inc. (f/k/a Apple Computer, Inc.) is a California corporation with its corporate headquarters located in Cupertino, California. (Compl. ¶ 2; Defendant's Answer to Plaintiff's Complaint ("Answer") ¶ 2.)

RESPONSE: Plaintiff admits the statements in Paragraph No. 2.

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3. Subject matter jurisdiction exists over this action pursuant to diversity jurisdiction as set forth in 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005. (Compl. ¶ 4.)

RESPONSE: Plaintiff admits the statements in Paragraph No. 3.

4. Venue lies in this District, as Plaintiff alleges that he purchased his iPhone from an Apple retail store located in OakBrook, Illinois. (Compl. ¶ 8.)

RESPONSE: Plaintiff admits the statements in Paragraph No. 4.

Undisputed Material Facts

A. The iPhone Launch on June 29, 2007

5. Apple began selling the iPhone on June 29, 2007. (Declaration of Douglas Vincent in Support of Apple's Motion for Summary Judgment ("Vincent Decl.") ¶ 3.)

RESPONSE: Paragraph 5 of Vincent's Declaration is as stated in Paragraph 5 above, however, there are no facts in Vincent's Declaration to support what time the stated sale began.

B. The iPhone Feature Label

6. Each iPhone is sold in a box on the outside of which a feature label is affixed. (Declaration of Peggy Jensen in Support of Apple's Motion for Summary Judgment ("Jensen Decl.") ¶ 2.)

RESPONSE: Paragraph 2 of Jensen's Declaration is as stated in Paragraph 6 above, however, Plaintiff states that the term "feature label" is unexplained, vague and ambiguous. Plaintiff further states that the statement in Paragraph 6 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

7. The feature label affixed to the iPhone box states:

> Battery has limited recharge cycles and may eventually need to be replaced by Apple service provider. Battery life and charge cycles vary by use and settings. See www.apple.com/batteries.

(Jensen Decl. ¶ 3, Ex. A.)

RESPONSE: Paragraph 3 of Jensen's Declaration is as stated in Paragraph 7 above, however, Plaintiff further states that "feature label" is unexplained, vague and ambiguous.

8. The feature label for the iPhone has not changed since the product first went on sale on June 29, 2007. (Jensen Decl. ¶ 4.)

RESPONSE: Paragraph 4 of the Jensen Declaration is as stated in Paragraph 8 above, however, Plaintiff states that the term "feature label" is ambiguous, vague and unexplained. Plaintiff further states that the statement in Paragraph 8 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

C. The iPhone In-Box Guide and User's Guide

9. Included within each iPhone box is a paper copy of the "Important Product Information Guide" for iPhone. (Jensen Decl. ¶ 5.)

RESPONSE: Paragraph 5 of the Jensen Declaration is as stated in Paragraph 9 above. Plaintiff further states that the statement in Paragraph 9 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

10. The Important Product Information Guide for the iPhone states:

> Never attempt to repair or modify iPhone yourself. iPhone does not contain any user-serviceable parts, except for the SIM card and SIM tray . . . The rechargeable battery in iPhone should be replaced only by an Apple Authorized Service Provider. For more information about batteries, go to www.apple.com/batteries.

(Jensen Decl. ¶ 5, Declaration of Carol Jinks in Support of Apple's Motion for Summary Judgment ("Jinks Decl.") ¶ 3, Ex. A.)

RESPONSE: Plaintiff denies that Paragraph 10 above is a full and accurate recollection of the text included in the Important Product Information Guide.

11. The Important Product Information Guide for iPhone has contained this language at all times since the iPhone first went on sale on June 29, 2007. (Jensen Decl. ¶ 6; Jinks Decl. ¶ 4.)

RESPONSE: Paragraphs 4 and 6 of the Jinks Declaration is as stated in Paragraph 11 above. Plaintiff states that the term "this language" is ambiguous, vague and unexplained. Plaintiff further states that the statement in Paragraph 11 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

12. The Important Product Information Guide is also available online on Apple's website at http://www.apple.com/support/manuals/iphone. (Jinks Decl ¶ 2.)

RESPONSE: Paragraph 2 of the Jinks Declaration is as stated in Paragraph 12 above. Plaintiff further states that the term "is available online" is ambiguous, vague and unexplained as it fails to state the dates/times that Defendant purports such information was available online. Plaintiff further states that the statement in Paragraph 12 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

13. The Important Product Information Guide was uploaded and accessible to the public on Apple's website from June 29, 2007 to the present. (Jinks Decl. ¶ 2.)

RESPONSE: Paragraph 2 of the Jinks Declaration is as stated in Paragraph 13 above. Plaintiff states that the term "Apple's website" is ambiguous, vague and unexplained, because it fails to establish the website address and/or internet protocol address at which the information was purportedly available. Plaintiff further states that the statement In Paragraph 13 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

14. Apple created an iPhone User's Guide which can be found on Apple's website at http://www.apple.com/support/manuals/iphone. (Jinks Decl. ¶ 5.)

RESPONSE: Paragraph 5 of the Jinks Declaration is as stated in Paragraph 14 above. Plaintiff states that the term "can be found" is ambiguous, vague and unexplained as it fails to state the dates/times that Defendant purports such information was available on the Apple website. Plaintiff further states that the statement in Paragraph 14 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

15. The iPhone User's Guide was uploaded and accessible to the public on Apple's website from June 29, 2007 to the present. (Jinks Decl. ¶ 5.)

RESPONSE: Paragraph 5 of the Jinks Declaration is as stated in Paragraph 15 above. Plaintiff further states that the term "accessible" is ambiguous, vague and unexplained, as is the term "Apple's website" as they fail to establish the website address and/or internet protocol address at which the information was purportedly available. Plaintiff further states that the statement in Paragraph 15 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

16. In "Chapter 2: Basics," under the heading "Charging the Battery" on page 27, the iPhone User's Guide states:

> Rechargeable batteries have a limited number of charge cycles and may eventually need to be replaced. The iPhone battery is not user replaceable; it can only be replaced by an authorized service provider. For more information, go to: www.apple.com/batteries.

(Jinks Decl. ¶ 6, Ex. B.)

RESPONSE: Plaintiff denies that Paragraph 16 above is a full and accurate disclosure of the text included in "Chapter 2: Basics," under the heading "Charging the Battery" on page 27 of the iPhone User's Guide.

17. In "Appendix A: Safety and Handling," under the heading "Repairing iPhone" on page 112, the iPhone User's Guide states:

> Never attempt to repair or modify iPhone yourself. iPhone does not contain any user-serviceable parts, except for the SIM card and SIM tray . . . The rechargeable battery in iPhone should be replaced only by an Apple Authorized Service Provider. For more information about batteries, go to www.apple.com/batteries.

(Jinks Decl. ¶ 7, Ex. B.)

RESPONSE: Plaintiff denies that Paragraph 17 above is a full and accurate disclosure of the text included in "Appendix A: Safety & Handling" under the heading "Repairing iPhone" on p. 112 of the iPhone Users Guide.

18. The above-quoted text in paragraphs 16 and 17 has been included in the iPhone User's Guide at all times. (Jinks Decl. ¶ 8.)

RESPONSE: Paragraph 8 of the Jinks Declaration is as stated in Paragraph 18 above, however, Plaintiff denies that the quoted text in paragraphs 16 and 17 are full and accurate disclosure of the text included in their respective sources; further, Plaintiff states that the statement in Paragraph 18 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

D. Apple's Website Disclosures

19. The webpage, www.apple.com/batteries, was updated with iPhone-specific information on June 29, 2007. (Vincent Decl. ¶ 4.)

RESPONSE: Plaintiff states that as the Defendant admitted in its Response to Request to Admit No. 14, attached to Plaintiff's Response to Defendant's motion for summary Judgment as Exhibit B, said website did not contain the material terms (i.e., cost, terms, hidden fees, etc.) of the relevant battery replacement program on June 29, 2007. Plaintiff further states that the term "iPhone specific information" is vague, ambiguous and unexplained and that the statement in Paragraph 19 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

20. The webpage, www.apple.com/batteries, with the iPhone-specific updates has been accessible to the public on Apple's website from June 29, 2007 to the present. (Vincent Decl. ¶ 4.)

RESPONSE: Plaintiff states that as the Defendant admitted in its Response to Request to Admit 14, attached to Plaintiff's Response to Defendant's Motion for Summary Judgment as Exhibit B, said website did not contain the material terms (i.e., cost, terms, hidden fees, etc.) of the relevant battery replacement program on June 29, 2007. Plaintiff further states that the term "iPhone specific updates" is vague, ambiguous and unexplained and that the statement in Paragraph 20 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

21. This webpage, www.apple.com/batteries, includes the following statements regarding rechargeable lithium-ion batteries:

> Like other rechargeable batteries, these batteries may eventually require replacement.
>
> You can charge all lithium-ion batteries a large but finite number of times, as defined by charge cycle.
>
> A charge cycle means using all of the battery's power, but that doesn't necessarily mean a single charge. For instance, you could listen to your iPod for a few hours one day, using half its power, and then recharge it fully. If you did the same thing the next day, it would count as one charge cycle, not two, so you may take several days to complete a cycle. Each time you complete a charge cycle, it diminishes battery capacity slightly, but you can put notebook, iPod and iPhone batteries through many charge cycles before they will hold only 80% of original battery capacity. As with other rechargeable batteries, you may eventually need to replace your battery.
>
> **Battery Lifespan** means the total amount of time your battery will last before it must be replaced.

(Vincent Decl. ¶ 5, Ex. A.)

RESPONSE: Paragraph 5 of the Vincent Declaration is as stated in Paragraph 21 above. Plaintiff further states that the term "includes the following statements" is ambiguous, vague and unexplained as it fails to state the dates/times that Defendant purports such information was available on the Apple website.

22. The above-quoted text in paragraph 21 has been included at all times from June 29, 2007 to the present. (Vincent Decl. ¶ 6.)

RESPONSE: Paragraph 6 of the Vincent Declaration is as stated in Paragraph 22 above. Plaintiff states that as the Defendant admitted in its Response to Request to Admit 14, attached to Plaintiff's Response to Defendant's Motion for Summary Judgment as Exhibit B, said website did not contain the material terms (i.e., cost, terms, hidden fees, etc.) of the relevant battery replacement program on June 29, 2007. Plaintiff further states that the statement in Paragraph 22 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

23. The webpage, www.apple.com/batteries/iphone.html, was uploaded and accessible to the public on Apple's website from June 29, 2007 to the present. (Vincent Decl. ¶ 10.)

RESPONSE: Plaintiff states that as the Defendant admitted in its Response to Request to Admit 15, attached to Plaintiff's Response to Defendant's Motion for Summary Judgment as Exhibit B, said website did not contain the material terms, (i.e., cost, terms, hidden fees, etc.) of the relevant battery replacement program on June 29, 2007. Plaintiff further states that the statement in Paragraph 23 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

24. The webpage, www.apple.com/batteries/iphone.html, provides pointers for maximizing the battery life and lifespan of the iPhone battery. It also states:

> "Battery lifespan" means the total amount of time your battery will last before it must be recharged"
>
> **Charge Cycles**: A properly maintained iPhone battery is designed to retain up to 80% of its original capacity at 400 full charge and discharge cycles. You may choose to replace your battery when it no longer holds sufficient charge to meet your needs.

(Vincent Decl. ¶ 11, Ex. C.)

RESPONSE: Paragraph 11 of the Vincent Declaration is as stated in Paragraph 24 above. Plaintiff further states that the term "pointers" is ambiguous, vague and unexplained. Plaintiff also states that Defendant fails to establish the date/time at which it alleges the above webpage contained the purported language.

25. The above-quoted text in paragraph 24 has been included at all times from June 29, 2007 to the present. (Vincent Decl. ¶ 12.)

RESPONSE: Plaintiff states that as the Defendant admitted in its Response to Request to Admit 15, attached to Plaintiff's Response to Defendant's Motion for Summary Judgment as Exhibit B, said website did not contain the material terms (i.e., cost, terms, hidden fees, etc.) of the relevant battery replacement program on June 29, 2007. Plaintiff further states that the statement in paragraph 25 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

26. The webpage, www.apple.com/batteries/replacements.html, provides information regarding Apple's battery replacement programs for its various products. (Vincent Decl. ¶ 7.)

RESPONSE: Paragraph 7 of the Vincent Declaration is as stated in Paragraph 26 above. Plaintiff further states that the terms "information" and "various products" are ambiguous, vague and unexplained.

27. The webpage, www.apple.com/batteries/replacements.html, was updated with iPhone-specific information on June 29, 2007. (Vincent Decl. ¶ 7.)

RESPONSE: Defendant's use of the term "iPhone-specific information" is vague and fails to inform the Plaintiff of what information Defendant is referring to. Plaintiff states that the material terms of Defendant's battery replacement program did not appear on said website on June 29, 2007 as evidenced by Group Exhibit A, and Exhibits H-M of Plaintiff's responses to Defendant's Motion for Summary Judgment. Plaintiff further states that the statement in Paragraph 27 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

28. The webpage, www.apple.com/batteries/replacements.html, with the iPhone-specific updates has been accessible to the public on Apple's website from June 29, 2007 to the present. (Vincent Decl. ¶ 7.)

RESPONSE: Defendant's use of the term "iPhone-specific" is vague and fails to inform the Plaintiff of what information Defendant is referring to. Plaintiff states that the material terms of Defendant's battery replacement program did not appear on said website on June 29, 2007 as evidenced by Group Exhibit A, and Exhibits H-M of Plaintiff's Response to Defendant's Motion for Summary Judgment. Plaintiff further states that the statement in Paragraph 28 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

29. The webpage, www.apple.com/batteries/replacements.html, provides detailed information regarding Apple's battery replacement program. For the iPhone, it contains the following information:

> **iPhone Owners.** Your one-year warranty includes replacement coverage for a defective battery. You can extend your coverage to two years from the date of your iPhone purchase with the AppleCare Protection Plan for iPhone. During the plan's coverage period, Apple will replace the battery if it drops below 50% of its original capacity. If it is out of warranty, Apple offers a battery replacement for $79, plus $6.95 shipping, subject to local tax.

(Vincent Decl. ¶ 8, Ex. B.)

RESPONSE: Paragraph 8 of the Vincent Declaration is as stated in Paragraph 29 above. Plaintiff states that the term "detailed information" is ambiguous, vague and unexplained, and that said information did not appear on the on the website on June 29, 2007 based upon Group Exhibit A and Exhibits H-M to Plaintiff's Response to Defendant's Motion for Summary Judgment. Plaintiff further state that the statement in Paragraph 29 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

30. The above-quoted text in paragraph 29 has been included at all times from June 29, 2007 to the present. (Vincent Decl. ¶ 9.)

RESPONSE: Plaintiff denies the statements in paragraph 30 based upon Group Exhibit A and Exhibits H-M of Plaintiff's Response to Defendant's Motion for Summary Judgment.

31. Apple first posted technical specifications for the iPhone on its website on January 9, 2007, at www.apple.com/iphone/technology/specs.html. (Vincent Decl. ¶ 13.)

RESPONSE: Paragraph 13 of the Vincent Declaration is as stated in Paragraph 31 above. Plaintiff states that the term "technical specifications" is ambiguous, vague and unexplained. Plaintiff further states that the statement in Paragraph 31 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

32. These technical specifications stated:

> Rechargeable batteries have a limited number of charge cycles and may eventually need to be replaced. Battery life and number of charge cycles vary by use and settings. See www.apple.com/batteries for more information.

(Vincent Decl. ¶ 13, Ex. D.)

RESPONSE: Plaintiff denies that Paragraph 32 above is a full and accurate disclosure of the statement and/or text included in the Technical Specifications. Plaintiff further states that the term "technical specification" is ambiguous, vague, and unexplained, and the term "stated' is ambiguous, vague and unexplained as it fails to state the dates/times that Defendant purports such information was available on the Apple website.

33. More detailed technical specifications for the iPhone were uploaded and accessible to the public on Apple's website at www.apple.com/iphone/specs.html from June 19, 2007 to the present. (Vincent Decl. ¶ 14.)

RESPONSE: Paragraph 14 of the Vincent Declaration is as stated in Paragraph 33 above. Plaintiff states that the term "more detailed technical specifications" is ambiguous, vague and unexplained. Plaintiff further states that the statement in Paragraph 33 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

34. The technical specifications uploaded on June 19, 2007 replaced the technical specifications discussed in paragraph 31. (Vincent Decl. ¶ 15.)

RESPONSE: Paragraph 15 of Vincent's Declaration is as stated in Paragraph 34 above. Plaintiff states that the term "technical specifications" is ambiguous, vague, and unexplained as Defendant does not indicate the specific "technical specifications" that it purports replaced some other undisclosed "technical specifications". Plaintiff further states that the statement in Paragraph 34 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

35. The technical specifications uploaded on June 19, 2007 state:

> Rechargeable batteries have a limited number of charge cycles and may eventually need to be replaced. See www.apple.com/batteries for more information.

(Vincent Decl. ¶ 14, Ex. E.)

RESPONSE: Plaintiff denies that Paragraph 35 above is a full and accurate disclosure of the statement and/or text included in the purportedly uploaded "technical specifications" on June 19, 2007. Plaintiff further states that the term "technical specifications" is ambiguous, vague, and unexplained.

36. The quoted content from the iPhone technical specifications uploaded on June 19, 2007 has been included at all times since that date. (Vincent Decl. ¶ 15.)

RESPONSE: Paragraph 15 of the Vincent Declaration is as stated in Paragraph 36 above. Plaintiff states that the term "quoted content" is ambiguous, vague and unexplained in that it fails to identify the "quoted content" to which it refers. Plaintiff further states that the statement in Paragraph 36 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

37. Support pages were uploaded to the Apple website for the iPhone on June 29, 2007. (Declaration of Lance Kunnuth in Support of Apple's Motion for Summary Judgment ("Kunnuth Decl.") ¶ 2.)

RESPONSE: The statement in Paragraph 37 above is not an undisputed material fact because Defendant's term "support pages" is vague, and Defendant fails to identify those "support pages" to which it refers. Plaintiff further states that the statement in Paragraph 37 is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

38. Both www.apple.com/support/iphone/service/battery and www.apple.com/support/iphone/service/faq were uploaded and accessible to the public on Apple's website from June 29, 2007 to the present. (Kunnuth Decl. ¶ 2.)

RESPONSE: Plaintiff denies the statements in Paragraph 38 based on Group Exhibit A and Exhibits H-M of Plaintiff's Response to Defendant's Motion for Summary Judgment.

39. The webpage, www.apple.com/support/iphone/service/battery, contains Frequently Asked Questions (FAQ) regarding the iPhone Out-of-Warranty Battery Replacement Program, including the following information:

> **What is the iPhone Battery Replacement Program?**
>
> If your iPhone requires service only because the battery's ability to hold an electrical charge has diminished, Apple will repair your iPhone for a service fee of $79, plus $6.95 shipping. . . .

> **How much does it cost to participate in the program?**
>
> The program costs $79, plus $6.95 shipping. The program cost is $85.95 per unit. All fees are in US dollars and subject to local tax. . . . Please review Apple's Repair Terms and Conditions for further details.
>
> **Will the data on my iPhone be preserved?**
>
> No, the repair process will clear all data from your iPhone. It is important to sync your iPhone with iTunes to back up your contacts, photos, email account settings, text messages, and more. Apple is not responsible for the loss of information while servicing your iPhone and does not offer any data transfer service. . . .
>
> **How long will service take?**
>
> The repair process normally takes three business days. See the iPhone Service FAQ for information about getting an AppleCare Service Phone for you to use with all of your data while your iPhone is being repaired.

(Kunnuth Decl. ¶ 3, Ex. A.)

RESPONSE: Plaintiff denies that said information appeared on the noted website on June 29, 2007 or for a substantial time thereafter as evidenced by Plaintiff's Group Exhibit A and Exhibits H-M of Plaintiff's Response to Defendant's Motion for Summary Judgment.

40. The above-quoted text in paragraph 39 has been included at all times. (Kunnuth Decl. ¶ 4.)

RESPONSE: Plaintiff denies the statements contained in Paragraph 40 based upon Plaintiff's Group Exhibit A and Exhibits H-M of Plaintiff's Response to Defendant's Motion for Summary Judgment.

41. The webpage, www.apple.com/support/iphone/service/faq, contains answers to Frequently Asked Questions (FAQ) about the iPhone repair process and the iPhone warranty, as well as about AppleCare Service Phones. (Kunnuth Decl. ¶ 5.)

RESPONSE: Plaintiff denies that said information appeared on the noted website

on June 29, 2007 or for a substantial time thereafter as evidenced by Group Exhibit A and Exhibits H-M of Plaintiff's Response to Defendant's Motion for Summary Judgment.

42. From the time it was originally uploaded on June 29, 2007, until November 2007, this Service FAQ disclosed the availability and cost of AppleCare Service Phones as follows:

> **If I need to have my iPhone repaired, will I be able to borrow an iPhone to use?**
>
> Apple can provide an AppleCare Service Phone for you to use with all of your data while your iPhone is being repaired. The service fee for the AppleCare Service phone is $29. For more details please review the iPhone Rental Terms and Conditions.

(Kunnuth Decl. ¶ 5.)

RESPONSE: Plaintiff denies the statements contained in Paragraph 42 based upon Plaintiff's Group Exhibit A and Exhibits H-M of Plaintiff's Response to Defendant's Motion for Summary Judgment.

43. While the precise wording of the Service FAQ was changed in November 2007, it at all times disclosed the availability and $29 cost of AppleCare Service Phones for rental while a customer's unit is being repaired. (Kunnuth Decl. ¶ 6.)

RESPONSE: Plaintiff denies the statements contained in Paragraph 43 based upon Plaintiff's Group Exhibit A and Exhibits H-M of Plaintiff's Response to Defendant's Motion for Summary Judgment.

E. The iPhone Warranty

44. Each iPhone comes with Apple's One-Year Limited Warranty. (Declaration of Arin Knuth in Support of Apple's Motion for Summary Judgment ("Knuth Decl.") ¶ 2, Ex. A.)

RESPONSE: Paragraph 2 of the Knuth Declaration is as stated in Paragraph 44 above. However, Plaintiff states that the statement in paragraph 44 above is not an undisputed material fact as Apple's business practices are unknown to Plaintiff.

45. Apple's One-Year Limited Warranty contains the following statement:

> ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED IN TIME TO THE TERM OF THIS LIMITED WARRANTY.

(Knuth Decl., Ex. A.)

RESPONSE: Plaintiff denies that Paragraph 45 above is a full and accurate disclosure of the statement and/or text included in Apple's One-Year Limited Warranty.

46. Under Apple's warranty policies, Apple would replace an iPhone battery if it dropped below 50% of its original capacity in the first year of purchase. (Knuth Decl. ¶ 3.)

RESPONSE: Paragraph 3 of the Knuth Declaration is as stated in Paragraph 46 above Plaintiff further states that paragraph 46 is not an undisputed fact because what "Apple would" do if an iPhone battery falls below 50% of its original capacity during the first year of purchase is within the control of the Defendant alone, and Defendant's business practices are unknown to Plaintiff.

F. Plaintiff's iPhone

47. According to Apple's customer and service records, Plaintiff Jose Trujillo purchased an iPhone on July 5, 2007. (Knuth Decl. ¶ 5.)

RESPONSE: Plaintiff denies the statements contained in Paragraph 47 based upon Plaintiff's Group Exhibit A and Exhibits H-M of Plaintiff's Response to Defendant's Motion for Summary Judgment.

48. Apple has no record of any battery-related complaints or requests for repair concerning the Plaintiff's iPhone. (Knuth Decl. ¶ 5.)

RESPONSE: Paragraph 5 of the Knuth Declaration is as stated in Paragraph 48 above. However, Plaintiff states that in its Response to Interrogatories, attached hereto as Exhibit H, Defendant also claimed to "have no record" of the voluminous press and media inquiries, as well as consumer advocacy group complaints, regarding its Battery Replacement Program, which Group Exhibit A, and Exhibits H-M of Plaintiff's Response to Defendant's Motion for Summary Judgment show is clearly untrue.

Respectfully submitted,

__/s/ James R. Rowe____________________

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